No. 83-1844

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In the Supreme Court

OF THE

United States

WILLIAM S. DOWNING, et al.,
Petitioners,

vs.

OAKLAND RAIDERS, LTD., et al.,
Respondents.

BRIEF OF RESPONDENTS LOS ANGELES RAIDERS (formerly Oakland Raiders) and LOS ANGELES MEMORIAL COLISEUM COMMISSION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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TABLE OF AUTHORITIES

Cases

	Page
Los Angeles Memorial Coliseum v. National Football League, 726 F.2d 1381 (9 Cir. Feb. 1984)	2
North American Soccer League v. National Football League, 670 F.2d 1249 (2 Cir.), *cert. denied*, 459 U.S. 1074 (1982)	3
Rogers v. Lodge, 458 U.S. 613 (1982)	3

Statutes

California Government Code, Title 1, Div. 7, Ch. 5	1
Section 1 of the Sherman Act (15 U.S.C. § 1)	2

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BRIEF OF RESPONDENTS LOS ANGELES RAIDERS (formerly Oakland Raiders) and LOS ANGELES MEMORIAL COLISEUM COMMISSION[1] IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner has carpentered a series of "questions", conceived to be enticing, which have nothing to do with this case and are not presented.

In early 1980, Oakland Raiders ("Raiders"), a member of the National Football League ("NFL"), decided to move to Los Angeles from Oakland, California, and was prevented from doing so by NFL's refusal to schedule Raiders' home games in Los Angeles. Litigation raged between the Raiders and the Los Angeles Memorial Coliseum Com-

[1]Los Angeles Memorial Coliseum Commission is a Joint Powers Agency of the City of Los Angeles, the County of Los Angeles, and the State of California, under California Government Code, Title I, Div. 7, Ch. 5.

mission, on the one hand, and NFL and its members (other than the Raiders) on the other, in which NFL and its members were charged by Raiders and the Coliseum Commission with conspiring to *prevent* the Raiders from *moving to Los Angeles from Oakland,* in violation of Section 1 of the Sherman Act. In due course it was so adjudicated in the District Court for the Central District of California, and the judgment was affirmed in *Los Angeles Memorial Coliseum v. National Football League,* 726 F.2d 1381 (9 Cir. Feb. 1984).

But in March, 1980, petitioner Downing, as an Oakland fan and season ticket-holder, filed this suit against the Raiders, the Los Angeles Memorial Coliseum Commission, the NFL and all its member clubs, charging, believe it or not, that NFL and its clubs, including the Raiders, were conspiring to move the Raiders to Los Angeles from Oakland!

The district court dismissed the case for the reason, *inter alia,* that there was not the slightest evidence of any conspiracy between the Raiders and the NFL and its other clubs to move the Raiders to Los Angeles from Oakland. That truth is obvious from the fact that bitter litigation was proceeding between Raiders on the one hand, and NFL and its other members on the other, in which the reverse was charged and ultimately adjudicated, that NFL and its members were conspiring to *keep Raiders* in Oakland and *out of Los Angeles.* In affirming that judgment, the Ninth Circuit Court of Appeals did so on the basis, among others, that there was no evidence whatsoever of the charged conspiracy (App. A to Petition at A-2). Under the two-court rule this Court accepts as a fact that there

is no such conspiracy as charged by petitioner. *Rogers v. Lodge,* 458 U.S. 613, 623 (1982).

By his Question No. 1, petitioner asks the Court to discuss the relationship of professional sports leagues to the antitrust laws. That might be the subject of a legal essay in a law review or a titillating one in "Sports Illustrated", but no case or controversy involved in the present proceedings presents it.

Petitioner's second purported question asks the Court to discuss the relationship of one market to another, but no conspiracy has been charged which requires any such essay.

Petitioner next asks the Court to consider whether the National Football League is a single entity. In a case where that issue *was* presented *(North American Soccer League v. National Football League,* 670 F.2d 1249 (2 Cir. 1982)), the Court denied certiorari, 459 U.S. 1074. The question is not present here. Regardless of whether NFL is an entity or consists of 28 different entities, there still is no evidence that it, either as an entity or as an aggregate of entities, conspired as charged.

Petitioner's last proffered question rests on a supposition that when NFL in 1966 obtained an amendment to the antitrust laws granting exemption for the merger of the National Football League and the American Football League, "representation" was made to Congress that the Raiders would remain in Oakland forever. The question petitioner proffers is whether the exemption from the antitrust laws granted by Congress to a merger of the two leagues has been lost. But no question whether the merger of NFL and the old AFL is now illegal is presented in this case. The claim in this case is that there was conspiracy

to *move* the Raiders out of Oakland. And there is no evidence of any such conspiracy.[2]

CONCLUSION

We respectfully submit that the petition should be denied.

Dated: San Francisco, California, June 6, 1984

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[2]Actually, the factual basis of the supposed question does not exist. The "representation", as quoted in the petition (at p. 6), consists of a statement by a witness in hearings on the bill as being that

> "[n]o transfers of location of any present franchise of either the NFL or the AFL will be made *as a result of the combining of the operations of the member clubs of two leagues* in an expanded single league, specifically the New York Giants and the New York Jets will remain in New York City, the San Francisco 49ers will remain in San Francisco, and the Oakland Raiders will remain in Oakland." [italics added]

That was a statement that no transfer of location would be made as a result of the merger. None was. The merger agreement was in 1966. Transfer of the Raiders to Los Angeles fourteen (14) years later was not a result of the merger.